

MONETARY LAW AND THE MODERN REALITY

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A. *Introduction*

2. *Law in the changing world*

Law must adjust itself to changing reality. Change must be taken into account. The scale of values and values of behaviour of lawyers are shaped by principles of jurisprudence which were developed slowly during the past. However the social and economic reality changes rather rapidly in the modern world. The change during the Past World War Two period was evolutionary, but it was a relatively rapid evolution. A whole branch of modern legal science should have evolved, the basic principles of modern jurisprudence. In fact novel rules of law and approaches have been adopted by the legislator and even by the judges, but the academic community owing to its conservatism has not adjusted its approaches to the modern reality. There is nothing wrong with conservatism. Not everything that is part of tradition is wrong by itself. Popular wisdom is traditional and great parts of it are very valuable. But conservatism must be functional and not mindless. New solution must be devised and prepared to modern problems as they arise otherwise we shall be heading for crises. Legal research should have dedicated much more effort to modern jurisprudence than it was in fact done.

2. *The industrial revolution and the law*

Since the industrial revolution in Britain in the middle of the eighteenth century a new period in economic history has started. We live in a period of rapid industrialization when the economic reality is constantly changing. Industrialization contributes to human material welfare, the standard of living is increasing under it. The pace of industrialization is rather rapid in the past World War Two. It is very often directed and planned from above. The whole underdeveloped world and especially Latin American countries search for ways and means how to accelerate the industrial revolution.

But industrial revolution by itself is not unmixed blessing. It creates many difficult and novel problems, social, moral, political. It affects the quality of life and affects many spiritual values. This is a challenge for all social sciences and especially for the philosophy of contemporary problems.

However this phenomenon of rapid industrialization creates many novel problems for the law. Labour law, social welfare law, economic law, family law face many new challenges to the solution of which the former approaches prepared by legal thought in past generation are unsatisfactory and inadequate.

Solutions must be found quickly and as a rules they must be prepared beforehand, otherwise the respect due to law is decreased and law and order is affected. In certain circumstance crises may erupt and they sometimes may be very serious in their social and political consequences. The world is one world. Crises spread in space and in time. Social and political reality is very often shaped by the rule of precedents.

The law is not a purely intellectual and academic discipline. It is tested in practice and contributes to social and political stability. The legal solutions are continuously tested and very often found wanting. This applies especially to economic and social law.

3. *Monetary law and modern jurisprudence*

Monetary law regulating obligations affected by changes of value of money has been accepted as a branch of legal study since ancient times. However, the modern world is rocked by monetary crises. In

fact monetary instability all over the world since the end of World War One. The difference is very often of kind but always one of degree. The whole economic almost all over the world is money economy even in underdeveloped countries. The modern world has achieved an unprecedented degree of material prosperity. But the results is that monetary problems affect everybody in our society. In many periods of history monetary problems affected only relatively few members of the society who were within the money economy. Today the impact is wholesale. Therefore, monetary law is nowadays a very important branch of modern jurisprudence competing for pride of place with such branches labour law and social security law. However legal research and legal profession have not yet adjusted themselves to this fact of life. The result is that monetary law is still a neglected branch of jurisprudence.

B. *Inflation, Devaluation and Monetary Law*

1. *Growth and full employment*

Inflation in the modern setup is almost a necessary incident of growth and full employment. From the theoretical point of view assuming that people adopt perfectly rational attitude toward economic phenomena, prosperity should not have antailed inflation. In fact the reality is different. People are not perfectly rational. There are many rigidities within the economic and society. When full employment persists people tend to maximize their social advantages like leisure and so on. Full employment is taken for granted and the attitude toward job security changes. Growth entails inflation as supply is lagging behind the demand, the result is increase in prices. Moderate growth and relative full employment entail moderate inflation.

However many countries like Israel and Latin American countries are interested in rapid growth. Rapid growth entails rapid inflation. Attempts to check and restrain the inflationary processes are made but very often they are either unsuccessful or only partly successful. In the past War Two Period an international competition between states has developed which country will archieve higher degree of growth and material prosperity. The differences between rates of past growth and present growth, the distribution of natural resources which is uneven, the purchasing power parities all create balance of payments problems. In the modern world a prolonged and

severe deflation is an unacceptable solution. Therefore, devaluations are carried out to solve balance of payments problems. In the past War Two era hundreds of devaluations were carried out.

Sometimes revaluation of currencies are carried out to cope with internal inflation, when the foreign exchange reserves position is satisfactory.

2. *Monetary Crises*

Inflation and devaluation is very often the result of conscious effort to promote growth and full employment. However very often inflation and rapid inflation is the result of attempts to carry social and economic reforms and of industrial, social and political strife. Very often in such circumstances inflation is uncontrollable. This is what happened in Chile under Allende. Sometimes the policy-makers are unable to control events. Sometimes the events themselves are uncontrollable. Latin American Countries experience with inflation since 1945 has not been happy. Many countries have faced the choice either run the risk of rapid inflation or remain underdeveloped, *many have chosen inflation.*

Economic reality is not easily controlled or planned. Unpredicted events and very often unpredictable events happen, such as the energy crisis.

Monetary crises have always happened in the past as a result of wars and revolutions. They happen more often in the modern era than in the past. Our world is a dynamic world.

We should hope for the best and prepare for the worst, namely pray that monetary crises will not happen but prepare solutions for them in relatively normal times once they happen.

3. *A challenge for monetary law*

Monetary law regulates, as formerly stated, obligations affected by changes of values of money. Monetary law, or at least its basic principles, is transnational. The same basic principles apply all over the world. There is a certain divergence between operating rules of the law. Latin American law has adjusted itself to a greater degree to contemporary phenomena. Anglo-Saxon law on the other hand

is relatively underdeveloped. During the Great German Inflation 1920-24 the German law since 1923 has adopted the remedy of revaluation of obligations.¹

Monetary law is transnational as the basic principles and the basic problems which require solution are similar. It should be studied and researched on international level, not only within the framework of comparative law but beyond it.

C. *The savings problem*

Savings are a necessity for the individual and not a luxury under the enterprise system. Part of the savings are institutionalized like pensions, life insurance. Other forms of savings are under the private party control. In modern era all long term savings are affected by inflation, devaluation and loss of value of money. In some countries like Spain the currency is relatively stable in others like Latin American countries they are very unstable. Liquid savings should be invested in the economic, in bonds in mortgages and so on. However, part of their value is lost over the duration of the contract. This phenomenon decreases the incentive to save and under full employment increases the inflation.

One of the forms of savings is investment in shares listed on the stock exchange. However in such case the saver assumes a business risk, like in other forms of business investment.

The problem is in a nutshell *how to preserve the real value of savings*. In the majority of countries there is a problem but no adequate solution. In Israel cost of living index value clause is included in bonds listed on the stock exchange, in life insurance contracts in pensions and in other long term contracts. Bonds linked to the cost of living index are extremely popular on the stock exchange. Even in Israel only partial solutions are still available. In Anglo-Saxon countries value clauses are only very seldom included in contracts.

D. *The Basic Principles of Monetary Law*

Two basic approaches on the problem how to ascertain the extent of a monetary obligation prevail in monetary law. The nominalistic solution prevailing all over the world provides that the nominal value

¹ The remedy of revaluation of obligations is more fully discussed in my book "The Nominalistic Principle" Bar Ilan University, Ramat Gan 1971.

controls. A pound is a pound, a dollar is a dollar and a peseta is a peseta notwithstanding changes of value in terms of foreign currency or purchasing power.

On the other hand a new approach has started to develop in legal and economic theory the purchasing power approach-technical called Valorism. This approach has not yet been accepted by any positive legal system.

How can purchasing power be measured? By cost-of-living index or by other appropriate indexes. Such indexes are nowadays published regularly and continuously. In the same way as valorism by agreement is possible the freedom to include value clauses in contracts - in the same way valorism may be imposed by law especially when changes of value of money are considerable.

Valorism is the perfect solution for the perfect world. However, our world is still imperfect. But valorism must be taken into account to mitigate hardships, to provide more effective solution to the problem of savings especially long term savings and to deal more effectively with the crisis problem. Valorism, its advantages and disadvantages should be intensely discussed on the intellectual and academic level in order to clarify issues as such discussion is a condition precedent for adopting practical reforms of monetary law. These problems must be discussed even in countries where money is relatively stable - as such stability is never in the modern setup permanent as proved by experience. Structural and radical reforms of monetary law are long overdue but the legal profession and even the economist still neglect monetary law.

E. *The Theoretical Foundations of Monetary Law*

Mann² maintains that private parties when they enter into a monetary contract speculate on the fate of currency. This approach is manifestly wrong. People contract in terms of national currency because they have no other practical choice. Recourse to barter is nowadays impractical. Money is standard of value: its sole function is to serve as purchasing power i. e. to assure command over commodities and services available in our economy. It should be as a standard of value of value stable but in fact it is not stable. Therefore the theories concerning risk taking in money are detached from mo-

² "The Legal Aspects of Money", second edition Oxford 1953, p. 66 and see third edition Oxford 1971, p. 71.

dern reality. Of course there are many professional speculators in money and foreign exchanges. The advice of bankers is more rational than that of a layman. However for an average reasonable man money is a standard of value outside the scope of ordinary risk taking.

The confusion in legal thought was caused by the formal construction of the promise to deliver a hundred dollars namely to deliver hundred dollars as means of payment. However a nominal sum included in contract serves as a standard of valuation. Therefore a different construction is possible to deliver such sum of money which include units of economic value which the nominal sum had at the time of the making of the contract. This is the valoristic approach.

From the strictly theoretical point of view the valoristic approach and construction is preferable to the nominalistic approach and construction.

F. *Conclusions*

Monetary problems are a fact of life in the modern era. They are dictated by contemporary problems, growthmanship, full employment, revolution of expectations, pressures of organized labour and social dynamism. Inflation is almost a necessary incident of economic dynamism. Therefore the attitude of monetary law to monetary problems is one of the major contemporary problems.

Monetary law should be researched and discussed on the transnational level. It is still an underdeveloped branch of law which has not prepared adequate solutions for contemporary problems.

Monetary law cannot be neglected for long. This neglect will entail many unnecessary sacrifices.

The first part of the paper discusses the importance of the study and the objectives of the research. It also mentions the scope of the study and the limitations of the study.

The second part of the paper discusses the methodology used in the study. It includes a description of the sample, the data collection methods, and the data analysis techniques.

The third part of the paper discusses the results of the study. It includes a description of the findings and a discussion of the implications of the findings.

The fourth part of the paper discusses the conclusions of the study. It includes a summary of the findings and a discussion of the implications of the findings.

The fifth part of the paper discusses the limitations of the study. It includes a discussion of the limitations of the study and the implications of the limitations.

The sixth part of the paper discusses the future research. It includes a discussion of the future research and the implications of the future research.